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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,383	04/30/2004	Mark Wayne Domanico	LUX-031149	3382

22876 7590 03/23/2006

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EXAMINER
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YAO, SAMCHUAN CUA

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/709,383	<b>Applicant(s)</b> DOMANICO, MARK WAYNE	
	<b>Examiner</b> Sam Chuan C. Yao	<b>Art Unit</b> 1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the current state of the art as evidence from the teachings of either (Parkay et al (US 5,742,955), Saladino (US 4,043,853) or May (US 5,650,228)) in view of JP 61225454 A and (Huber et al (US 6,164,021) or JP 05009454 A) for reasons of record set forth in a prior office action dated 11-09-05 in numbered paragraph 2.

### ***Response to Arguments***

3. Applicant's arguments filed on 02-13-06 have been fully considered but they are not persuasive.

On page 3, Counsel argued that "... reading ... JP 61225454, Huber or JP 05009454 reveals absolutely no discussion concerning the application of urethane foam in bath replacement.", and further argued that none of these references "are directed to solving different problem than the present application.". First of all, it is true that none of these secondary references are directed to the "application of urethane foam in bath replacement." (i.e. using a urethane foam to adhesively bond

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a liner to a bathtub). If that's the case, then the claims would have been rejected under 35 USC § 102 instead of 35 USC § 103. The main issue here, however, is whether or not, it would have been obvious in the art to use a urethane foam adhesive to bond a liner to a bathtub. Since the bond line between a liner and a bathtub is expected to be exposed regularly with water, one in the art would have been motivated to look for solution(s) to a related adhesive bonding art which would enable to form a water-tight seal/bond between the liner and the bathtub. In view that, a polyurethane foam adhesive is known in the art to be effective for bonding virtually any types of material (as exemplified in the teachings of Huber (col. 1 line 18 to col. 2 line 47)) including materials which are suitable for making liners and bath; and this type of adhesive is known in the art to provide a water-tight sealing/bonding as exemplified in the teachings of (for example) Huber or JP '9454, one in the art would have been encouraged to use a polyurethane foam adhesive for bonding a liner to a bathtub.

Counsel also argued that, there is no suggestion in the secondary references that a polyurethane foam adhesive can be effective in a bath line replacement system.

However, Huber teaches using a foamable polyurethane adhesive for bonding roof tile which is made of "ceramic, brick, stone, clay, **plastic**, wood, metal, rubber or bituminous materials" (bold-face and emphasis added) onto a base of a roof and for forming water-tight seal around "*most troublesome areas*" "*to prevent the infiltration of wind-driven rain, hail or snow*" (col. 1 line 18 to col. 2 line 47). The teachings of Huber would have reasonably suggested to one in the art that, a polyurethane foam

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adhesive would be effective for bonding virtually any types of material including those materials which are suitable for making liners and bathtubs.

As for Counsel's argument on page 4 regarding the May patent, simply because May does not positively teach using a foam polyurethane adhesive, it does not mean that May teaches away from using a foam polyurethane adhesive. It is worth-noting that, May teaches using a catalytic adhesive. A catalyzed foamable polyurethane adhesive is well known in the art in order to accelerate the curing rate of the adhesive. This type of polyurethane foam adhesive is clearly a catalytic-type of adhesive. Moreover, as noted above, a polyurethane foam adhesive is known to be effective for bonding virtually most types of materials including materials which are generally used for making liners and bathtubs. Therefore, a foamable polyurethane adhesive is reasonably expected to be effective for adhesively bonding a liner to a bathtub. Moreover, this type of adhesive is known in the art to provide a water-tight seal/bond between substrates. This clearly would be a desirable characteristic for an adhesive, which is used for bonding a liner and bathtub. Since Applicant has not shown any showing of unexpected benefit, the application of polyurethane foam adhesive to bond a liner to a bath-tub is taken to be obvious in the art for reasons set forth above.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (571) 272-1224. The examiner can normally be reached on Monday-Friday with second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Richard Crispino can be reached on (571) 272-1171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sam Chuan C. Yao  
Primary Examiner  
Art Unit 1733

Scy  
03-13-06